

Buck's War Surp
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3580-00031

90-16

1 UNITED STATES
2 ENVIRONMENTAL PROTECTION AGENCY
3 REGION 9

4 IN THE MATTER OF:)

5 Buck's War Surplus)
6 4965 East Gaist Street)
7 Las Vegas, Nevada)

8 Defense Logistics Agency)

9 Respondent)

10 Proceeding under Sections 104)
11 and 106(a) of CERCLA,)
12 42 U.S.C. §§ 9604 and 9606(a),)
13 as amended.)

Order No. 90-16

14 ADMINISTRATIVE CONSENT ORDER
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Without trial or adjudication of any issues of fact or law, the Parties agree as follows:

I. JURISDICTION

1.1 This Administrative Consent Order ("Order") by the United States Environmental Protection Agency ("EPA") is issued to the United States Defense Logistics Agency ("DLA") pursuant to the authority vested in the President of the United States of America by Sections 104 and 106(a) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, 42 U.S.C. §§ 9604 and 9606(a), as amended by the Superfund Amendments and Reauthorization Act of 1986, Pub. Law No. 99-499, 100 Stat. 1613, ("CERCLA"). The authority of the President has been delegated to the Administrator of EPA in Executive Order 12580, 52 Fed. Reg. 2923, January 29, 1987, and redelegated to the Regional Administrators of EPA. This Order pertains to real property and improvements thereon located at Buck's War Surplus, 4965 East Geist Street, Las Vegas, Nevada and at the residence of Mr. Harold W. Buck, 45 N. Lailani, Las Vegas, NV ("the Sites").

1.2. The Defense Logistics Agency ("DLA") has been delegated authority to enter this Order and has the authority to conduct the actions required herein in execution of the Defense Environmental Restoration Program (DERP) pursuant to 10 U.S.C. §§ 2701-2707.

1.3 The actions taken pursuant to this Order shall be consistent with CERCLA and the National Oil and Hazardous Substance Contingency Plan, 40 C.F.R. Part 300, as amended ("NCP").

1 Notice of entry of this Order has been given to the State of
2 Nevada.

3
4 II. DEFINITIONS

5 2.1. Except as noted below or otherwise explicitly
6 stated, the definitions provided in CERCLA and the NCP shall
7 control the meaning of terms used in this Order.

8 A. "Order" shall refer to this document and shall
9 include all appendices and attachments to this document to the
10 extent they are consistent with the original Order as executed or
11 modified. All such appendices and attachments are integral and
12 enforceable parts of this document.

13 B. "CERCLA" shall mean the Comprehensive Environmental
14 Response, Compensation, and Liability Act, Public Law 96-510, 42
15 U.S.C. Section 9601, et seq., as amended by the Superfund
16 Amendments and Reauthorization Act of 1986, Public Law 99-499, and
17 any subsequent amendments.

18 C. "Days" shall mean calendar days, unless business
19 days are specified. Any submittal which would be due under the
20 terms of this Order on a Saturday, Sunday, or Federal holiday shall
21 be due on the following business day.

22 D. "Defense Logistics Agency" or ("DLA") is an agency
23 within the Department of Defense and shall mean its employees,
24 agents, successors, and authorized representatives. DLA includes
25 the Defense Reutilization and Marketing Service ("DRMS"), a primary
26 level field activity having responsibility for the Department of
27 Defense program for the disposal of excess and surplus personal

1 property of the Department of Defense.

2 E. "EPA" shall mean the United States Environmental
3 Protection Agency, its employees, agents, successors, and
4 authorized representatives.

5 F. "Removal" shall have the same meaning as provided
6 in Section 101(23) of CERCLA, 42 U.S.C. § 9601(23).

7 G. "Sites" shall mean the Buck's War Surplus Site 4965
8 East Geist Street, Las Vegas, Nevada, and the residence of Mr.
9 Harold W. Buck at 45 N. Lailani, Las Vegas, Nevada.

10

11 III. PARTIES BOUND

12 3.1 The Parties to this Order are the United States
13 Environmental Protection Agency and the United States Defense
14 Logistics Agency.

15 3.2 This Order shall apply to and be binding upon
16 both Parties to this Order. The Parties shall notify their agents,
17 employees, and/or contractors involved in carrying out the terms
18 and conditions of the Order, and provide a copy of the Order to any
19 contractor within two (2) days of their retention.

20 3.3 DLA shall be responsible for ensuring that its
21 contractors comply with the terms and conditions of this Order.
22 The failure of DLA to provide proper direction to its contractors
23 and any resultant noncompliance with this Order by a contractor
24 shall not be considered a Force Majeure event unless the Parties
25 so agree. DLA will notify EPA of the identity and assigned tasks
26 of each of its contractors performing work under this Order upon
27 their selection.

1 IV. PURPOSE

2 4.1 In entering into this Order, the mutual
3 objectives of EPA and DLA are to remove from the Sites and dispose
4 of or recycle hazardous substances and contaminated soil to protect
5 public health and welfare and the environment in a manner
6 consistent with CERCLA, the NCP, and applicable EPA guidances or
7 policies.

8
9 V. FACTS

10 5.1 For purposes of this Order, the following
11 constitute a summary of the facts on which this Order is based.
12 None of the facts related herein shall be considered admissions by
13 any Party. They shall not be used by any Party related or
14 unrelated to this Order for purposes other than determining the
15 basis for this Order.

16 BACKGROUND

17 A. Buck's War Surplus occupies approximately ten acres,
18 of which approximately two and one-half acres are in use for
19 storage of a variety of hazardous substances. The property
20 consists of a small work shed and a large outside storage area.
21 A wood, concrete, and wire fence surrounds most of the area in use.
22 A small mobile housing trailer and a few assorted materials are lo-
23 cated outside the fence. Additional containers of hazardous
24 substances, as well as the business documents and records for
25 Buck's War Surplus are kept at the residence of Mr. Harold W. Buck,
26 the owner of the Site. Buck's War Surplus lies approximately one
27 half mile south of Nellis Air Force Base and several commercial

1 establishments.

2 B. On May 3, 1990, the Nevada Division of Environmental
3 Protection ("NVDEP") inspected Buck's War Surplus. In addition to
4 a large amount of assorted materials, including military surplus
5 nets, supply boxes and debris, the NVDEP inspectors discovered
6 approximately 2000 containers of the one to five gallon size which
7 contain reagents, paints, oils and various other chemicals. The
8 inspectors also found approximately 300 55-gallon drums containing
9 oils, greases and unknown compounds. These incompatible substances
10 are not properly segregated to minimize the risk of fire or
11 explosion, and many of the containers are rusty and leaking. Many
12 of the containers bear markings which indicate that they are former
13 military surplus goods. The owner/operator of Buck's War Surplus
14 has informed EPA that all of the containers of hazardous sub-
15 stances on the Sites were purchased from the Defense Reutilization
16 and Marketing Service ("DRMS"), a branch of the Defense Logistics
17 Agency within the U.S. Department of Defense.

18 C. On May 30, and 31, 1990, the NVDEP conducted two
19 interagency meetings to discuss the Sites. In attendance at the
20 meetings were members of the NVDEP, the Clark County Health Depart-
21 ment, the Clark County Fire Department, the Las Vegas Police
22 Department, the Clark County District Attorney's Office, the
23 Federal Bureau of Investigation, the Department of Defense Office
24 of Inspector General and EPA Emergency Response Section ("ERS") of
25 Region 9's Hazardous Waste Management Division. The interagency
26 members agreed that the Sites may pose an imminent and substantial
27 threat to the public due to the release or potential releases of

1 potentially hazardous substances from the Sites. EPA ERS agreed
2 to conduct a Preliminary Assessment of the Sites, in conjunction
3 with the Clark County Fire Department, in order to assist with both
4 Clark County's Fire Department Clean-up Order and NVDEP's Hazardous
5 Waste Removal Order.

6 D. On June 11, 1990, the Clark County Fire Department
7 served a warrant on Harold W. Duck to enter and search the Sites.
8 Pursuant to the warrant, EPA On-Scene Coordinator Robert Bornstein,
9 along with ERS Enforcement Investigator Bill Weis, and four members
10 of the Technical Assistance Team, conducted a Preliminary
11 Assessment at the Sites. Preliminary data indicates the presence
12 of corrosive, alkaline, ignitable, flammable, and water reactive
13 compounds. Samples were taken and laboratory analysis is presently
14 being conducted. Several of the sampled drums were in poor
15 condition and leaking onto bare soil. Soil staining from materials
16 which had apparently previously spilled or leaked from the
17 containers was observed in many locations. Certain substances
18 found in the containers at the Sites, including decontamination
19 agents (eg., DSA- 4), are extremely dangerous and have no apparent
20 civilian use. In addition, Mr. Buck has informed EPA that other
21 substances which he purchased were in such a deteriorated state at
22 the time of sale that they had no potential commercial or private
23 use.

24 ENFORCEMENT HISTORY

25 E. Following the Preliminary Assessment, the Clark
26 County Fire Department issued an Order to Buck's War Surplus to
27 clean-up the Buck's War Surplus property and bring it into

1 compliance with the County Fire Codes. Mr. Buck informed David
2 Faircloth, Fire Inspector, that he was financially unable to comply
3 with the Fire Department Order. In addition, the Nevada Division
4 of Environmental Protection (NVDEP) issued Buck's War Surplus a
5 Hazardous Waste Clean-up Order. On June 12, 1990, Mr. Buck
6 informed Alene Coulson, NVDEP, that he would not be able to perform
7 the required tasks.

8 F. On June 18, 1990, pursuant to Section 106(a) of
9 CERCLA, 42 U.S.C. § 9606(a), EPA Region 9 issued Administrative
10 Order 90-15 to Buck's War Surplus and Harold W. Buck. The Order
11 required the recipients to perform removal and other response ac-
12 tions at the Sites. On June 20, 1990, Mr. Buck orally informed EPA
13 that neither he nor Buck's War Surplus would comply with Order 90-
14 15 due to lack of finances.

15 G. In a letter dated June 20, 1990, EPA informed the
16 Respondents that they are potentially responsible for response
17 actions at the Sites. In the same letter, EPA requested that
18 Respondents voluntarily undertake the removal and other necessary
19 response actions at the Sites. On June 22, 1990, Respondents in-
20 formed EPA that they needed additional time to assess the Sites and
21 therefore would be unable to timely comply with EPA's request.

22 H. On June 25, 1990, EPA initiated response actions at
23 the Sites. EPA's response actions to date have included
24 recontainerization of leaking containers, soil sampling, excavation
25 and containerization of contaminated soil, and removal from the
26 Site and disposal of approximately 400 containers. EPA has also
27 provided notification of the Sites to the State and Federal Natural

1 Resource Trustees.

2 RESPONSIBLE PARTIES

3 I. The Sites are owned by Mr. Harold W. Buck. There
4 are no other known owners. Harold W. Buck is liable as an "owner"
5 under Section 107(a)(1) of CERCLA, 42 U.S.C. § 9607(a)(1). Buck's
6 War Surplus operated on the Sites as a military surplus retailer
7 from 1962 until June, 1990. Buck's War Surplus is therefore also
8 liable as an "operator" under Section 107(a)(1) of CERCLA, 42
9 U.S.C. § 9607(a)(1). In 1979, a major fire occurred at Buck's War
10 Surplus which destroyed much of Buck's War Surplus inventory and
11 allegedly left the business in financial ruin. Mr. Buck has al-
12 leged that there is no insurance coverage for the property or the
13 business. Mr. Buck has also alleged that he has no other finan-
14 cial assets.

15 J. The Defense Logistics Agency, through the Defense
16 Reutilization and Marketing Service, is liable under Section
17 107(a)(3) of CERCLA, 42 U.S.C. § 9607(a)(3), as one who by con-
18 tract, agreement or otherwise "arranged for disposal" of the haz-
19 ardous substances at the Sites. Some of the substances sold to Mr.
20 Buck by DRMS were hazardous substances which had no potential
21 commercial or private use. Such sales therefore constituted "an
22 arrangement for disposal."

23 ENDANGERMENT

24 K. Several contamination threats were identified by EPA
25 during its assessment of the Sites. The improper storage of
26 leaking containers of incompatible hazardous substances creates a
27 serious threat of explosion and/or fire. A fire at the Sites would

1 cause the release of potentially toxic fumes and potentially affect
2 workers at neighboring industries and military personnel stationed
3 at Nellis Air Force Base. Military aircraft taking off from the
4 Base fly directly over Buck's War Surplus at a low altitude. A
5 fire or explosion could also threaten the safety of both the flight
6 crew and the aircraft. Ongoing releases of chemicals to the soil
7 at the Sites from the numerous leaking containers may adversely
8 impact the regional groundwater which is used for both domestic and
9 industrial purposes. Depth to groundwater beneath the Sites is
10 estimated to be approximately 100 feet.

11 L. Endangered species which inhabit the Las Vegas area
12 are the desert tortoise and fox. These animals are protected under
13 the Endangered Species Act of 1973 (listed April 2, 1990).
14 Releases from the Sites may adversely effect these endangered
15 species. Any release from the Sites would also have a significant
16 impact on the delicate desert ecology.

17

18 VI. DETERMINATIONS

19 6.1 Based on the above findings of fact, EPA has
20 made the following determinations, relied upon to establish
21 jurisdiction and authority to enter into this Order. None of these
22 determinations shall be considered admissions by any Party and
23 shall not be used by any person, related or unrelated to this
24 Order, for purposes other than determining the basis for the Order:

25 A. Buck's War Surplus and the residence of Harold W.
26 Buck are facilities within the meaning of Section 101(9) of CERCLA,
27 42 U.S.C. § 9601(9);

3
1 B. DLA is a person within the meaning of Section
2 101(21) of CERCLA, 42 U.S.C. § 9601(21);

3 C. DLA arranged by contract and agreement for disposal
4 and/or treatment and/or arranged with a transporter for transport
5 for disposal or treatment, of certain hazardous substances owned
6 or possessed by DLA, at the Sites, facilities owned or operated by
7 another party within the meaning of Section 107(a)(3), 42 U.S.C.
8 § 9607(a)(3);

9 D. The presence of hazardous substances at the Sites
10 and the past and/or potential migration of hazardous substances,
11 pollutants, or contaminants from the Sites constitutes an actual
12 or threatened release as defined in Section 101(22) of CERCLA,
13 42 U.S.C. § 9601(22);

14 E. DLA is a Department of Defense agency, subject to
15 the control of the Secretary of Defense and subject to the
16 provisions of the Defense Environmental Restoration Program (DERP),
17 10 U.S.C. 2701, et seq;

18 F. The actual and/or threatened release of hazardous
19 substances from the Sites may present an imminent and substantial
20 endangerment to the public health or welfare or the environment;

21 G. The actions required by this Order are necessary to
22 protect the public health and welfare and the environment;

23 H. DLA is qualified to conduct the response action
24 required in accordance with the provisions of this Order.

25 I. Actions provided for in this Order are consistent
26 with the NCP and are necessary to protect the public health,
27 welfare, or environment.

VII. SCOPE OF ORDER/WORK TO BE PERFORMED

7.1 Based upon the Findings of Fact and Determinations, the Parties agree that DLA will implement the following measures under the direction of EPA's On-Scene Coordinator.

A. Within sixty (60) calendar days of the effective date of this Order, DLA shall submit in writing, for EPA review and approval, a Removal Plan and Schedule ("Workplan"). The Workplan shall include provisions for the following activities to be completed within the timeframes set forth:

- 1) Within one hundred twenty (120) calendar days of the effective date of this Order, all hazardous substances identified in Appendix A, attached hereto, shall be removed from the Sites and sent to EPA approved hazardous waste storage, treatment, disposal, recycling and/or reutilization facilities;
- 2) Within one hundred twenty (120) calendar days of the effective date of this Order, all stained and contaminated soil at the Sites which has been containerized by EPA shall be removed from the Sites and sent to an EPA approved hazardous waste storage, treatment, disposal, recycling and/or reutilization facility;

If EPA provides comments on the Workplan, DLA shall incorporate all of EPA's comments and resubmit the plan within five (5) days of receiving any such EPA comments. Upon EPA approval of the Workplan, DLA shall commence implementation. The EPA approved Workplan shall be incorporated into this Order and shall be enforceable under the terms of this Order. The Workplan shall be in accordance with appropriate EPA guidances and those directed for use by the OSC. All work conducted pursuant to this Order shall conform with the EPA's Site Health and Safety Plan or an alternative plan submitted by DLA and approved by EPA, and all

1 applicable Occupational Safety and Health Administration (OSHA)
2 regulations.

3 B. At the conclusion of the removal activities, DLA
4 shall prepare a Final Report summarizing the work conducted
5 pursuant to this Order. The Final Report shall contain copies of
6 all hazardous waste manifests and notices of sales. The Final
7 Report shall be submitted to EPA no later than one hundred and
8 seventy five (175) days from the effective date of this Order.

9 C. During the implementation of the Workplan, DLA shall
10 provide written bi-weekly summary reports to EPA, the Nevada
11 Division of Environmental Protection and the Clark County Fire
12 Department. These bi-weekly reports shall contain a summary of the
13 previous period's activities and planned up-coming events.

14 D. DLA shall provide notice to EPA, the Nevada Division
15 of Environmental Protection and the Clark County Fire Department
16 forty-eight (48) hours prior to performance of any work on the
17 Sites.

18 E. Security Plan: As soon as possible, but no later
19 than fifteen (15) days after the effective date of this Order, DLA
20 shall assume responsibility for securing the Buck's War Surplus
21 property and shall submit a Security Plan for EPA approval. The
22 Security Plan shall include provisions for twenty-four (24) hour
23 guard service, physical security of the materials on the Buck's War
24 Surplus property, and a contingency plan for response to any
25 destabilization of the materials. The twenty-four (24) hour guard
26 service may commence prior to EPA approval of the Security Plan.

1 VIII. NOTIFICATION

2 8.1 DLA shall transmit to EPA the Workplan and
3 Final Report required by this Order by next day (express) mail, or
4 facsimile.

5 8.2 Notice shall be provided under this Order to
6 the following at the following addresses:

7 A. Robert Bornstein
8 U.S. EPA, Region 9
9 1235 Mission Street, H-8-3
10 San Francisco, California 94103
11 (415) 744-1026

12 B. John DePietro
13 Federal Center
14 74 N. Washington Ave.
15 Battle Creek, MI 49017-3092
16 ATTN: DRMS-HT

17 8.3 Unless otherwise requested or specified in this
18 Order, all routine correspondence including bi-weekly progress
19 reports may be sent via regular mail to the above-named persons.

20 8.4 To the maximum extent feasible, all
21 communications between the Parties regarding this Order shall be
22 channeled through the EPA Project Manager (On-Scene Coordinator)
23 and the DLA Project Manager.

24 IX. PROJECT MANAGERS

25 9.1 EPA has designated a Project Manager for the
26 Sites who shall have the authorities, duties, and responsibilities
27 vested in the On-Scene Coordinator by the NCP. For the purposes
28 of this Order, EPA's Project Manager is Robert Bornstein who can
be contacted at the address and telephone number listed above.

1 DLA shall also designate a Project Manager who shall be responsible
2 for overseeing the implementation of this Order. Either Party may
3 change its Project Manager by providing written notice to the other
4 Party five (5) days prior to such change.

5 9.2 The DLA Project Manager or his designee shall
6 be physically present at the Sites during implementation of the
7 Work Plan and shall make himself available to the U.S. EPA Project
8 Manager for the pendency of this Order. The absence of the EPA or
9 DLA Project Managers from the Sites shall not be cause for the
10 stoppage of work.

11 X. PERMITS

12
13 10.1 The Parties recognize that the requirement to
14 obtain permits for this removal action, if any, shall be as
15 provided for in CERCLA and the NCP. The Parties also recognize
16 that under Sections 121(d) and 121(e)(1) of CERCLA, 42 U.S.C. §§
17 9621(d) and 9621(e)(1), and the NCP, portions of the response
18 actions called for by this Order and conducted entirely on the
19 Sites are exempted from the procedural requirement to obtain a
20 federal, State or local permit but must satisfy all applicable or
21 relevant and appropriate federal and State standards, requirements,
22 criteria, or limitations which would have been included in any such
23 permit.

24 10.2 This Section is not intended to relieve DLA
25 from any and all regulatory requirements, including obtaining a
26 permit, whenever it proposes a response action involving either the
27 movement of hazardous substances, pollutants, or contaminants off

1 of the Sites, or the conduct of a response action off of the Sites.

2 10.3 DLA shall notify EPA in writing of any permit
3 required for activities off of the Sites as soon as it becomes
4 aware of the requirement. DLA agrees to obtain any permits
5 necessary for the performance of any work under this Order. Upon
6 request, DLA shall provide EPA with copies of all such permit
7 applications and other documents related to the permit process.
8 Copies of permits obtained in implementing this Order shall be
9 appended to the appropriate submittal or progress report.

10
11 XI. SAMPLING AND QUALITY ASSURANCE

12 11.1 DLA shall notify EPA not less than ten (10)
13 days in advance of any sample collection activity. Upon request,
14 DLA shall allow EPA and/or its authorized representatives to take
15 split or duplicate samples of any samples collected by DLA pursuant
16 to this Order.

17 11.2 DLA shall advise EPA of any sampling analysis
18 or monitoring results within forty-eight (48) hours of receiving
19 the results. The results shall be submitted to EPA with the
20 Progress Reports.

21 11.3 All response work performed pursuant to this
22 Order shall be done under the direction and supervision or in
23 consultation with, as necessary, a qualified professional or other
24 expert, with experience and expertise in hazardous waste
25 management, hazardous waste site investigation, cleanup, and
26 monitoring.

27 11.4 Upon request, DLA shall provide EPA with a copy

of the professional qualifications of any of DLA's contractors, employees, and/or agents implementing the provisions of this Order.

11.5 Throughout all sample collection, transportation, and analysis activities conducted in connection with this Order, DLA shall use quality assurance, quality control, and chain-of-custody procedures which are in accordance with EPA approved methods, including "Interim Guidelines and Specifications for Preparing Quality Assurance Project Plans", QAMS-005/80, "Data Quality Objective Guidance", U.S. EPA 1540/687/003 and 004, "Removal Program Quality Assurance/Quality Control Interim Guidance: Sampling, QA/QC Plan and Data Validation", EPA OSWER Directive 9360.4-01, dated February 2, 1989, and any EPA updates or revisions to these guidances. DLA shall require each laboratory it uses to perform analyses according to EPA approved methods. Each laboratory shall be required to participate in a quality assurance/quality control program equivalent to that which is followed by EPA and which is consistent with EPA QAMS-005/80.

XII. DATA AND DOCUMENT AVAILABILITY

12.1 DLA shall provide to EPA all information resulting from and/or pertaining to any actions taken by DLA pursuant to this Order including, but not limited to, any sampling results, names of contractors, and information as to previously unknown conditions and practices which become known as response activities progress.

12.2 DLA shall provide EPA with quality assured results of any sampling, tests, or other data with respect to the

1 implementation of this Order within thirty (30) days of their
2 collection or field testing. If quality assurance is not completed
3 within thirty (30) days, preliminary data or results shall be made
4 available within the thirty (30) day period and quality assured
5 data or results shall be submitted as they become available but in
6 no event later than forty-five (45) days after the sampling or
7 testing.

8 12.3 Upon request, any raw data collected by DLA
9 shall be made available to EPA.

10 12.4 If a preliminary (non-QA/QC) analysis indicates
11 an immediate risk to the public health, DLA shall immediately
12 notify EPA verbally, followed by written confirmation within
13 twenty-four (24) hours of discovery.

14 12.5 All data, factual information, and documents
15 submitted by respondent to EPA pursuant to this Order shall be
16 subject to public inspection.

17 12.6 DLA may assert a confidentiality claim covering
18 all or part of the information requested by this Order, except that
19 analytical data shall not be claimed as confidential by DLA.
20 Information determined to be confidential by EPA pursuant to 40
21 C.F.R. Part 2 shall be afforded the protection specified therein.
22 If no claim of confidentiality accompanies the information when it
23 is submitted to EPA, the information may be made available to the
24 public without further notice to DLA.

25 12.7 Upon reasonable request for information or data
26 pertaining to the Sites by DLA, and a determination by EPA that
27 release of information or data pertaining to the Site is in the

1 public interest, EPA shall provide DLA with the requested
2 information or data.

3
4 XIII. RECORD PRESERVATION

5 13.1 DLA agrees that it shall preserve, during the
6 pendency of this Order and for a minimum of one year after the
7 termination of this Order, a central repository of the records and
8 documents (including computer databases) required to be prepared
9 under this Order. DLA shall also acquire and retain in this
10 repository copies of all documents that relate to hazardous waste
11 contamination at the Sites which are in the possession of its
12 employees, agents, accountants, contractors, or attorneys. After
13 this one year period, DLA shall notify EPA at least 30 days before
14 the documents are scheduled to be destroyed. If EPA requests that
15 some or all such documents be saved, DLA shall, at no cost to EPA,
16 provide EPA with the documents or copies of the documents. DLA
17 shall notify EPA of the address of the repository and shall provide
18 access to EPA at all reasonable times.

19
20 XIV. ACCESS

21 14.1 DLA shall make an immediate best effort to
22 obtain a written access agreement from the owner of the Sites
23 necessary to accomplish the removal actions contemplated by this
24 Order. Such agreement shall include provisions for reasonable
25 access by EPA and its authorized representatives.

26 14.2 In the event the owner of the Sites refuses or
27 attempts to restrict DLA's access for the removal action, EPA may

1 exercise its own access authorities or initiate its own contact
2 with the owner for purposes of obtaining access to the Sites.

3 14.3 Both Parties shall exercise access to the Sites
4 in compliance with all approved health and safety plans applicable
5 to such access.

6 14.4 In the event that DLA requires access to
7 property other than the Sites and is unable to obtain such access,
8 DLA shall immediately notify EPA in writing regarding both the lack
9 of, and efforts to obtain, such access.

10
11 XV. EMERGENCIES

12 15.1 If DLA discovers or becomes aware of an
13 emergency or other situation that may present an endangerment to
14 public health, welfare or the environment at or near the Sites,
15 which is related to or may affect the work, DLA shall immediately
16 orally notify EPA.

17 15.2 EPA's OSC may determine that acts or
18 circumstances at the Sites (whether related or unrelated to this
19 Order) may endanger human health or welfare or the environment and
20 may order DLA to halt or modify further implementation of this
21 Order until the endangerment is abated.

22
23 XVI. MODIFICATIONS

24 16.1 In the event of unanticipated or changed
25 circumstances at the Sites, DLA shall notify EPA within 24 hours
26 of discovery of the unanticipated or changed circumstances.

27 16.2 EPA may determine that modification of the

1 Workplan or performance of additional tasks is necessary in
2 response to the unanticipated or changed circumstances. DLA shall
3 implement any modifications or additional tasks which EPA
4 determines are necessary. DLA shall complete the modifications or
5 additional tasks in accordance with the standards, specifications,
6 requirements and schedules determined or approved by EPA.

7 16.3 If, at any time during the removal activities,
8 DLA becomes aware of the need for additional data, DLA shall have
9 an affirmative obligation to submit a memorandum documenting the
10 need for additional data to the EPA Project Manager within twenty
11 (20) days.

12

13 XVII. DISPUTE RESOLUTION

14 17.1 Except as specifically set forth elsewhere in
15 this Order, if a dispute arises under this Order, the procedures
16 of this Section shall apply. If DLA objects to any EPA notice of
17 disapproval or or requirement made pursuant to this Order, DLA
18 shall notify EPA's Project Manager in writing of its objections
19 within seven (7) days of receipt of the disapproval notice or
20 requirement. DLA's written objections shall define the dispute,
21 state the basis of DLA's objections, and be sent via certified
22 mail, return receipt requested. EPA and DLA then have an
23 additional seven (7) days to reach agreement. If an agreement is
24 not reached within seven (7) days, DLA may request a determination
25 by EPA's Deputy Director for Superfund, Region 9. The Deputy
26 Director's determination shall set forth EPA's decision regarding
27 the disputed issue. DLA shall proceed in accordance with EPA's

2
1 final decision regarding the issue in dispute, regardless of
2 whether DLA agrees with the decision. If DLA does not agree to
3 perform or does not actually perform the work in accordance with
4 EPA's final decision, EPA reserves the right in its sole discretion
5 to conduct the work itself, to seek reimbursement from DLA, to seek
6 enforcement of the decision, to seek stipulated penalties, and/or
7 to seek any other appropriate relief.

8 17.2 The pendency of any dispute under this Section
9 shall not affect any Party's responsibility for timely performance
10 of the work required by this Order. All elements of the work
11 required by this Order shall continue and be completed in
12 accordance with the applicable deadline.

13 17.3 When dispute resolution is in progress, work
14 affected by the dispute will continue unless the Deputy Director
15 for Superfund, Region 9 requests, in writing, that work related to
16 the dispute be stopped because, in EPA's opinion, such work is
17 inadequate or defective, and such inadequacy or defect is likely
18 to yield an adverse effect on human health or the environment, or
19 is likely to have a substantial adverse effect on the remedy
20 selection or implementation process.

21 17.4 The invocation of dispute resolution does not
22 stay stipulated penalties under this Order.

23 17.5 Disputes Concerning the Imposition of Stipu-
24 lated Penalties or the Final Deadline for Work under Section VII:

25 A. If a dispute concerns the imposition of stipulated
26 penalties or the final deadline for completion of work at the Sites
27 as required under Section VII of this Order, and no agreement has

1 been reached through informal dispute resolution, the written
2 statement of dispute shall be forwarded to the Dispute Resolution
3 Committee (DRC). The EPA representative on the DRC is the
4 Director, Hazardous Waste Management Division, Region 9. The DLA
5 representative on the DRC is the Commander, DRMS. The DRC shall
6 have seven (7) days to unanimously resolve the dispute and issue
7 a written decision. If the DRC is unable to resolve the dispute
8 within the seven (7) day period, the written statement of dispute
9 shall be forwarded to the Senior Executive Committee (SEC).

10 B. The SEC shall serve as the forum for resolution of
11 disputes not resolved by the DRC. The EPA representative on the
12 SEC is the Regional Administrator of EPA Region 9. The DLA
13 representative on the SEC is the Staff Director, Directorate of
14 Installation Services and Environmental Protection, DLA. The SEC
15 shall have seven (7) days to unanimously resolve the dispute and
16 issue a written decision. If the SEC is unable to resolve the
17 dispute within the seven (7) day period, the Regional Administrator
18 shall issue a written opinion on the dispute. DLA may, within
19 seven (7) days of the Regional Administrator's issuance of a
20 written opinion, issue a notice elevating the dispute to EPA's
21 Assistant Administrator for Enforcement. In the event DLA does
22 not elevate the dispute to the Assistant Administrator for
23 Enforcement within the designated seven (7) day period, DLA shall
24 be deemed to have agreed with the Regional Administrator's written
25 opinion on the dispute.

26 C. Upon escalation of the dispute to the Assistant
27 Administrator for Enforcement in accordance with the procedures

1 above, the Assistant Administrator for Enforcement will review and
2 resolve the dispute within fourteen (14) days. Upon request, and
3 prior to the resolution of the dispute, the Assistant Administrator
4 for Enforcement shall meet and confer with the DLA Director, or his
5 designee, to discuss the dispute. The Assistant Administrator for
6 Enforcement shall then provide DLA with a written final decision
7 setting forth the resolution of the dispute.

8
9 XVIII. STIPULATED PENALTIES

10 18.1 In the event that DLA fails to submit a
11 document required in Section VII above, or fails to comply with a
12 significant term or condition of this Order, EPA may assess a
13 stipulated penalty against DLA. A stipulated penalty may be
14 assessed in an amount not to exceed five thousand dollars
15 (\$5,000.00) for the first week (or part thereof), and ten thousand
16 dollars (\$10,000.00) for each additional week (or part thereof) for
17 which a failure set forth in this Paragraph occurs.

18 18.2 Upon determining that DLA has failed in a
19 manner set forth in Paragraph 18.1, EPA shall so notify DLA in
20 writing. If the failure in question is not already subject to
21 dispute resolution at the time such notice is received, DLA shall
22 have 15 days after receipt of the notice to invoke dispute
23 resolution on the question of whether the failure did, in fact,
24 occur. DLA shall not be liable for the stipulated penalty assessed
25 by EPA if the failure is determined, through the dispute resolution
26 process, not to have occurred. No assessment of a stipulated
27 penalty shall be final until the conclusion of dispute resolution

1 procedures related to the assessment of the stipulated penalty.

2 18.3 The annual reports required by Section
3 120(e)(5) of CERCLA, 42 U.S.C. § 9620(e)(5), shall include, with
4 respect to each final assessment of a stipulated penalty against
5 DLA under this Order, each of the following:

- 6 A. The facility responsible for the failure;
7 B. A statement of the facts and circumstances giving
8 C. A statement of any administrative or other
9 D. A statement of any additional action taken by or at
10 E. The total dollar amount of the stipulated penalty
11 assessed for the particular failure.

12 18.4 Stipulated penalties assessed pursuant to this
13 Section shall be payable to the Hazardous Substances Response Trust
14 Fund only in the manner and to the extent expressly provided for
15 in Acts authorizing funds for, and appropriations to, the
16 Department of Defense. All penalties shall be paid by a check made
17 payable to the United States Treasury and addressed to:

18 U.S. Environmental Protection Agency
19 Region 9, Attn.: Superfund Accounting
20 P.O. Box 360863M
 Pittsburgh, PA 15251

21 DLA shall send a cover letter with any check and the letter shall
22 identify the Site name, Buck's War Surplus, and make reference to
23 this Order. Respondent shall simultaneously send to the EPA
24 Project Manager a notification of the penalty paid, including a
25 photocopy of the check.

26 18.5 Nothing in this Order shall be construed to
27 render any officer or employee of DLA personally liable for the
28 ADMINISTRATIVE CONSENT ORDER - Page 26

1 payment of any stipulated penalty assessed pursuant to this
2 Section.

3 18.6 These stipulated penalty provisions do not
4 preclude EPA from pursuing any other remedies or sanctions which
5 are available to EPA because of DLA's failure to comply with this
6 Order.

7
8 XIX. FORCE MAJEURE

9 19.1 A Force Majeure shall mean any event arising
10 from causes entirely beyond the control of DLA, or any entity
11 controlled by DLA, including their contractors and subcontractors,
12 that delays the timely performance of any obligation under this
13 Order, notwithstanding DLA's best efforts to avoid the delay. The
14 requirement that DLA exercise "best efforts to avoid the delay"
15 includes using best efforts to anticipate any potential force
16 majeure event and best efforts to address the effects of any
17 potential force majeure event (1) as it is occurring, and (2)
18 following the potential force majeure event, such that the delay
19 is minimized to the greatest extent practicable. Force Majeure may
20 include insufficient availability of appropriated funds, if DLA
21 shall have made timely request for such funds as part of the
22 budgetary process but shall not include increased costs or expenses
23 of Response Actions, whether or not anticipated at the time such
24 Response Actions were initiated.

25 19.2 If any event occurs or has occurred that may
26 delay the performance of any obligation under this Order, whether
27 or not caused by a force majeure event, DLA shall notify by
28 ADMINISTRATIVE CONSENT ORDER - Page 27

1 telephone the EPA Project Manager or, in his absence, the Deputy
2 Director for Superfund, Region 9, within 48 hours of when DLA knew
3 or should have known that the event might cause a delay. Within
4 five business days thereafter, DLA shall provide in writing the
5 reasons for the delay; the anticipated duration of the delay; all
6 actions taken or to be taken to prevent or minimize the delay; a
7 schedule for implementation of any measures to be taken to mitigate
8 the effect of the delay; and a statement as to whether, in the
9 opinion of DLA, such event may cause or contribute to an
10 endangerment to public health, welfare or the environment. DLA
11 shall exercise best efforts to avoid or minimize any delay and any
12 effects of a delay. Failure to comply with the above requirements
13 shall preclude DLA from asserting any claim of force majeure.

14 19.3 If EPA agrees that the delay or anticipated
15 delay is attributable to force majeure, the time for performance
16 of the obligations under this Order that are directly affected by
17 the force majeure event shall be extended by agreement of the
18 Parties for a period of time not to exceed the actual duration of
19 the delay caused by the force majeure event. An extension of the
20 time for performance of the obligation directly affected by the
21 force majeure event shall not, of itself, extend the time for
22 performance of any subsequent obligation.

23 19.4 If EPA does not agree that the delay or
24 anticipated delay has been or will be caused by a force majeure
25 event, or does not agree with DLA on the length of the extension,
26 the issue shall be subject to the dispute resolution procedures of
27 this Order. In any such proceeding, to qualify for a force majeure

1 defense, DLA shall have the burden of demonstrating, by a
2 preponderance of the evidence that the delay has been or will be
3 caused by a force majeure event, that the duration of the event was
4 or will be warranted under the circumstances, that DLA did exercise
5 or was exercising due diligence by using its best efforts to avoid
6 and mitigate the effects of the delay, and that DLA complied with
7 the requirements of paragraph 19.2.

8 19.5 Should DLA carry the burden set forth in
9 paragraph 19.4, the delay at issue shall be deemed not be a
10 violation of the affected obligation of this Order.

11
12 XX. RESERVATION AND WAIVER OF RIGHTS

13 20.1 Except as provided herein, DLA is not released
14 from any liability which they may have pursuant to any provisions
15 of state and federal law, including any claim for damages for
16 liability to destruction or loss of natural resources.

17 20.2 EPA shall not be held as a Party to any
18 contract entered into by DLA to implement the requirements of this
19 Order. EPA expressly reserves all rights and defenses that it may
20 have, including EPA's rights to undertake response actions at the
21 Sites at any time.

22 20.3 In entering into this Order, DLA waives any
23 right to seek reimbursement or present any claim under Sections
24 106, 111, or 112 of CERCLA, 42 U.S.C. §§ 9606, 9611, or 9612, for
25 any work performed pursuant to this Order and any modifications
26 thereto.

27 20.4 Nothing in this Order shall constitute or be

original
4

1 construed as, a bar or release from any claim, cause of action, or
2 demand in law or equity by or against any person, firm,
3 partnership, or corporation not a signatory to this Order for any
4 liability it may have arising out of or relating in any way to this
5 Order or the generation, storage, treatment, handling,
6 transportation, release, or disposal of any hazardous substances,
7 hazardous wastes, hazardous constituents, pollutants, or
8 contaminants found at, taken to, or taken from the Sites.

9

10 XXI. FUNDING

11 21.1 It is the expectation of the Parties to this
12 Order that all obligations of DLA arising under this Order will be
13 fully funded. DLA agrees to seek sufficient funding through the
14 Department of Defense budgetary process to fulfill its obligations
15 under this Order.

16 21.2 Any requirement for the payment or obligation
17 of funds, including stipulated penalties, by DLA established by
18 the terms of this Order shall be subject to the availability of
19 appropriated funds, and no provision herein shall be interpreted
20 to require obligation or payment of funds in violation of the
21 Anti-Deficiency Act, 31 U.S.C. Section 1341. In cases where
22 payment or obligation of funds would constitute a violation of the
23 Anti-Deficiency Act, the dates established requiring the payment
24 or obligation of such funds shall be appropriately adjusted.

25 21.3 If appropriated funds are not available to
26 fulfill DLA's obligations under this Order, EPA reserves the right
27 to initiate an action against any other person, or to take any

response action, which would be appropriate absent this Order.

21.4 Funds authorized and appropriated annually by Congress under the "Environmental Restoration, Defense" appropriation in the Department of Defense Appropriation Act and allocated by the Deputy Assistant Secretary of Defense (Environment), DASD(E), to DLA will be the source of funds for activities required by this Order consistent with Section 211 of SARA, 10 U.S.C. Chapter 160. However, should the Environmental Restoration, Defense appropriation be inadequate to meet the total DLA implementation requirements, the Department of Defense shall employ and DLA shall follow a standardized Department of Defense prioritization process which allocates that year's appropriations in a manner which maximizes the protection of human health and the environment. A standardized Department of Defense prioritization model shall be developed and utilized with the assistance of EPA.

XXII. RECOVERY OF EPA EXPENSES

22.1 On or before the effective date of this Order, EPA will submit to DLA a demand for reimbursement of EPA's expenses incurred for response actions at the Sites. The demand will be made in the form of a letter and will be accompanied by Removal Cost Management System documentation that will serve as the accounting of EPA's expenditures for response actions at the Sites. DLA shall pay the amount demanded within fifteen (15) days of receipt of the demand. Payment shall be made by check payable to the United States Treasury and addressed to:

U.S. Environmental Protection Agency
Region 9, Attn.: Superfund Accounting
P.O. Box 360863M
Pittsburgh, PA 15251

DLA shall send a cover letter with any check and the letter shall identify the Site name and number, Buck's War Surplus - #S6, and make reference to this Order. Respondent shall simultaneously send to the EPA Project Manager a copy of the cover letter and check.

22.2 Recovery of any additional EPA response costs shall occur following the termination of this Order and shall be in accordance with the above described procedures.

XXIII. TERMINATION AND SATISFACTION

23.1 This Order shall be deemed satisfied and terminated upon receipt by DLA of written notice from EPA that DLA has completed its obligations under the terms of the Order.

XXIV. EFFECTIVE DATE

24.1 The effective date of this Order shall be the date on which the fully executed Order is received by DLA.

XXV. ENFORCEABILITY

25.1 Upon the effective date of this Order, any standard, regulation, condition, requirement or order which has become effective under CERCLA and is incorporated into this Order is enforceable by any person pursuant to Section 310 of CERCLA, 42 U.S.C. § 9659, and any violation of such standard, regulation, condition, requirement or order will be subject to civil penalties

1 under Sections 310(c) and 109 of CERCLA, 42 U.S.C. §§ 9659(c) and
2 9609.

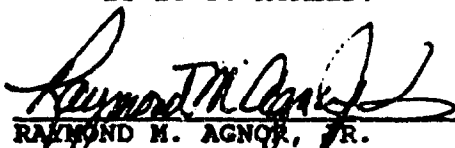
3 25.2 Any final resolution of a dispute pursuant to
4 Section XVII (Dispute Resolution) of this Order which establishes
5 a term, condition, timetable, deadline or schedule shall be
6 enforceable by any person pursuant to Section 310 of CERCLA, 42
7 U.S.C. § 9659, and any violation of such term, condition,
8 timetable, deadline or schedule will be subject to civil penalties
9 under Sections 310(c) and 109 of CERCLA, 42 U.S.C. §§ 9659(c) and
10 9609.

AUTHORIZED SIGNATURES

Each of the undersigned representatives of the Parties certifies that he or she is fully authorized to enter into the terms and conditions of this Order and to legally bind such Party to this Order.

IT IS SO AGREED:

By


RAYMOND M. AGNOR, JR.
Colonel, USAF
Commander, Defense Reutilization
and Marketing Service

5 Oct 90
Date

By


JEFF ZELIKSON, Director
Hazardous Waste Management Division, Region 9
United States Environmental Protection Agency

9-26-90
Date